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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 624

AMERICAN RAILROAD COMPANY OF PUERTO RICO,

Petitioner,

vs.

ANTONIO TORRES ROMERO

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

SUGGESTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

L. E. DUBON,
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Respondent

SUGGESTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondents in this action, in opposition to the petition for a writ of certiorari, respectfully submit the following suggestions:

Opinion Below

The opinion of the Circuit Court of Appeals for the First Circuit *has not* been yet officially reported. It will be reported in 156 F. 2d; it now appears at page 173 of the Record and has been published in 6 WH Cases 219. That of the District Court has not been officially reported, but appears at page 153 of the Record and was published in 8 WHR 572.

Statement of the Case

The respondents accept the Statement by the petitioner, but wish to point out that the record does not show that any opinion was ever expressed by the Wage and Hour Division of the United States Department of Labor, with respect to the validity of the agreement of November 4, 1941 (R. 141), to which the said Statement refers, compromising the statutory liability of the petitioner or the right of the respondents to collect unpaid minimum wages, overtime compensation and liquidated damages in a suit instituted under Section (b) of the Fair Labor Standards Act of 1938 (29 U. S. C. A. 216).

Decision of the District Court

The District Court, in its Findings, Conclusion and Opinion (R. 153), held:

1. That the general rule is that waivers of the minimum wages due under the Act, are invalid (R. 156).

2. That the employees cannot waive the minimum wage to which they are entitled under the law, neither by contract *before* beginning their employment nor *after* by waiver or release, as either method would defeat the purpose of the Congress and would be in violation of the stated policy of the Act (R. 156).

3. That the existence of exceptional circumstances justify a departure from the general rule (R. 156).

4. That considering the extraordinary circumstances existing at the time the waiver agreement of November 4, 1941, was signed, it resulted beneficially to the respondents (R. 159), who were paid all that the petitioner could have paid and thereafter continue operations or avoid insolvency (R. 154).

5. That sustaining the validity of the said agreement would have the effect of keeping the channels of commerce open, whereas a different conclusion might have an opposite effect by forcing the petitioner into receivership or liquidation (R. 159).

6. That the said waiver agreement of November 4, 1941 was valid and enforceable as to all respondents who approved and ratified the same, who may not now question its validity (R. 155).

Appeal to the Circuit Court of Appeals

From the judgment of the District Court (R. 159), an appeal was taken by the respondents, to the Circuit Court of Appeals for the First Circuit (R. 160).

Decision of the Circuit Court of Appeals

The Opinion of the Circuit Court was rendered by a full Court (R-173). It held:

1. That whether the enforcement of the statutory rights of respondents would benefit or injure them, their employer, or the community, is legally immaterial (R. 173).

2. That the Act does not exempt employers who are in financial difficulties (R. 174).

3. That the *Fort Smith & Western Railroad Co.* v. *Mills*, 253 U. S. 206 case, on which both the District Court and the petitioner relied, is not in point (R. 174).

4. That the waiver or release agreement of November 4, 1941, executed by the respondents, is invalid (R-173.)

Petitioner's Position

The position of the petitioner is:

1. That the Act, does not preclude a bona-fide settlement of an indebtedness for unpaid minimum wages, overtime compensation and liquidated damages, under the Act.

2. That the Act does not expressly prohibit employees from exercising the right of salvaging as much of wage arrearages as is possible by agreement with an insolvent or financially embarrassed employer unable to pay more.

3. That the release executed by the respondents for an amount in excess of what they could have recovered in an action for the full amount due them, where such action would probably result in the discontinuance of the operations of their employer, with consequent loss of employment and serious injury to the public served by it, is valid.

Respondents' Position

The respondents contend in opposition:

1. That a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy.

2. That the Congressional policy of uniformity in the application of the provisions of the Fair Labor Standards Act to all employers, may not be affected by their financial inability nor by any other circumstances, exceptional or not.

Reasons for Granting the Writ

The petition (pp. 8, 9) sets forth, as "Reasons for Granting the Writ",

1. That this case presents important questions of Federal law, that have not been but should be settled by this Court.

2. That the prevailing decision is probably in conflict with applicable decisions of this Court.

3. That the decision of the Circuit Court of Appeals vitally affects the public interest and economic life of Puerto Rico.

The "Reasons for Granting the Writ Are Not Sufficient"

The respondents submit that the petition does not state sufficient reasons for granting the writ, because:

1. All the important questions of Federal law set forth in the petition, have been either decided by this Court, or are not involved in this case.

2. The prevailing decision has correctly applied the decisions of this Court, and is not in conflict with any of them.

3. The remedy for any evil consequences to the public interest or economic life of Puerto Rico, in the uniform application of the Congressional policy of the Act, is beyond the province of this Court.

Conclusion

The respondents, referring to the brief submitted herewith, *infra*, in support of the foregoing suggestions, respectfully pray the petition for a writ of certiorari in this case, should be denied.

L. E. DUBON,
Attorney for the Respondents

OPPOSING BRIEF FOR RESPONDENTS

ARGUMENT

Point 1

Rights, Affecting the Public Interest, May Not Be Waived or Released

Statutory rights conferred on private parties, but affecting the public interest, may not be waived or released if such waiver or release contravenes the policy of the act. *Midstate Horticultural Co.* v. *Pennsylvania R. Co.*, 320 U. S. 356; *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173.

Any waiver of the right to the minimum wage or overtime compensation or liquidated damages fixed by the Fair Labor Standards Act of 1938, contravenes the Congressional policy, and is invalid. *Brooklyn Saving Bank* v. *O'Neill*, 324 U. S. 697; *D. A. Schulte, Inc.*, v. *Gangi*, decided April 29, 1946.

The purpose of the Act which was "to secure for the lowest paid segment of the nation's workers a subsistence wage," precludes the reduction by compromise, of the wages and damages allowed under the Act, even by reason of financial inability of the employer, as such compromises thwart the public policy of minimum wages, promptly paid, by reducing the sum selected by Congress as the proper minimum wage, and as the proper compensation for withholding payment of accrued wages. *D. A. Schulte, Inc.* v. *Gangi, supra.*

The employer and the employee are as much precluded from bargaining for less, *before* performance, as well as *after* performance, as otherwise, any employer operating under financial difficulties, or on the eve of bankruptcy,

could pay substandard wages, and because of such financial troubles, obtain a full release from all further liability, paying less than what the Act obliges him to, contrary to the statutory policy, just because his employees would have received less by pressing their claims to execution through legal proceedings, or because if forced into bankruptcy or receivership, they may be forced to join the legion of the unemployed and be not paid in full in any event.

POINT 2

The Congressional Policy of Uniformity in the Application of the Act, May Not Be Thwarted by Reason of Exceptional Circumstances.

To eliminate labor conditions detrimental of the minimum standards of living necessary for health, efficiency and the general welfare of workers, Congress, through the exercise of its power to regulate commerce to secure the free flow of goods in interstate commerce, adopted certain standards, delegating to the Administrator the power to reduce the basic minimum wages fixed by it, through the issuance of Wage Orders, upon the recommendation of Industry Committees, as provided in Sections 5(e) and 8 of the Act, to provide relief in those cases where exceptional circumstances might require a lower minimum. However, the exercise of this power to reduce those basic minimum wages was subjected by Congress to certain other standards, to fully carry the purposes of the Act, and was not left without limitations. The Act provides, that these Industry Committees must investigate conditions in the industry and recommend the highest minimum which will not substantially curtail employment, having due regard to economic and competitive conditions. To validate settlement agreements of liability under the Act because of ex-

ceptional circumstances, would seriously affect the uniform application of the statutory policy under which these Wage Orders and Industry Committees are created to carry out the motives and purposes of this legislation, because it would leave in the hands of the employer and his employees the power to determine *any* minimum wage, depending solely upon their relative bargaining powers and what in their own judgment may be considered as exceptional circumstances—*D. A. Schulte, Inc.*, v. *Gangi, supra*,—and the pressure which may be exercised to accept *any* terms under threats of bankruptcy, receivership, disemployment, and greater loss, all of which would be contrary to, and would seriou ly undermine the legislative policy of the Act, which it was designed to effectuate. Furthermore, if any waiver agreement could be valid in consideration of the financial disabilities of an employer the uniform enforcement of the Act would be greatly impaired due to compliance with its provisions left at the will of those subject to its terms, and the legislative purpose destroyed.

If existing exceptional circumstances can validate an agreement to compromise accrued minimum wages due, the same consideration could validate any agreement to work for less than the minimum in the future, yet no one would suggest that the right to such basic minimum wage can be bargained away, under any circumstances. The waiver agreement is invalid from its inception, regardless of possible bankruptcy, insolvency, disemployment, or total loss prevailing at the time of its execution, cannot vest any rights, and thwarts the congressional policy of uniform application of the Act.

Point 3

The Fort Smith Case Is not in Conflict With Applicable Decisions of This Court

The Circuit Court of Appeals held that the *Fort Smith* case,—*Fort Smith & Western Railroad Co.* v. *Mills*, 253 U. S. 206—is not in point, because the question involved was not whether employees could require their employer to comply with the law, but whether the District Attorney could require the receiver of a railroad company to comply with the law when the receiver and the employees were agreed in wishing to disregard it.

The *Fort Smith* case arose under the provisions of the Adamson Act, approved September 3, 1916, c. 463, 369, Stat. 721 (45 U. S. C. A. 65), and involved an agreement entered into between a railroad carrier and its employees providing for wage payments lower than those prescribed by the statute, which agreement the employees desired to keep, the Court having accepted that the general language of the statute, avowedly enacted in haste to meet an emergency could not be taken to go further than the emergency required or to have been intended to make trouble rather to allay it, further holding that it was not meant to forbid work being done at a lower price than the rates laid down when both parties to the bargain wished to go on as before, and when the circumstances of the road were so exceptional that the lower compensation accepted would not affect the market for labor upon other roads, not at all within the ends that the Adamson Act had in view.

The legislative history of the Adamson Act shows that it was merely an attempt to settle a labor dispute by direct congressional action. At the time the controversy arose, there were two prevailing systems concerning wages of railroad employees: One, an eight-hour day with addi-

tional pay for overtime; and the other, a stated run of 100 miles for every ten hours, with extra pay for any excess. In March 1916, a demand was made on the employers under which eight hours or less was to constitute a day's work for a run of 100 miles or less in all road service, except passenger trains, all miles in excess of 100 to be paid for at the same rate, per mile, with overtime compensation at one and one-half times the pro-rata rates, to be computed on the minute basis. The demand made this standard obligatory on the railroads, *but optional on the employees,* who could retain the then existing system on any particular road, if so desired.

The employers refused this demand and when the dispute failed of adjustment under the provisions of the Newlands Act, approved July 15, 1913, ch 6, Section 1-11, 38 Stat. 103-108, President Wilson called both parties to confer with him, and after arbitration was rejected by the employers he proposed that the principle of the eight-hour day be accepted, while the question of time and one-half for overtime was investigated by a commission to be appointed by him, which suggestion was acceptable to the employees, but the employers would not grant the eight-hour day before an investigation was made.

A Nation-wide strike was abruptly called to begin September 4, but the President secured a promise that the strike would be called off if Congress enacted an eight-hour law in line with his proposal. He then recommended in a Special Message to Congress that the Eight-hour day for train operatives be established by law; that a commission be created to observe the operation of the eight-hour law, and Congress approve an increase in rates by the Interstate Commerce Commission if increased costs under the new law made this necessary. The Adamson Act was enacted embodying these two recommendations, effective

January 1, 1917, under the terms of which, eight hours was to "be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning compensation for services. . . ." A commission of three was ordered appointed by the President to observe the operation and effects of this provision during a period of six to nine months; and pending the report of the commission, and for thirty days thereafter, standard wages for the eight-hour day "shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at a rate not less than the pro-rata for such standard eight-hour workday."

The constitutionality of the Adamson Act was assailed but upheld in *Wilson* v. *News*, 243 U. S. 332, as an emergency measure to head off the strike and save the commercial disaster, the property injury and the personal suffering of all, not to say starvation, that threatened throughout the Nation.

The legislative policy of the Fair Labor Standards Act of 1938, as disclosed by its legislative history, and the provisions and the structure of the Act, clearly shows that the *Fort Smith* case is no precedent that can uphold a waiver agreement of the benefits granted thereunder in the public interest.

In adopting this Act, Congress intended to aid the unprotected, unorganized and lowest paid of the nation's working population, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage, to protect certain groups of the population from substandard wages and excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce. It is not a temporary measure urgently adopted to meet the consequences of a serious emergency as the Adamson Act, but a fully con-

sidered and amply debated piece of legislation aimed at the elimination of labor conditions detrimental to maintenance of minimum standards of living necessary for health, efficiency and necessary well-being of employees and the eradication of burdens on commerce caused by such substandard conditions.

Starving wages paid employees were caused in great part by financial difficulties of their employers, who as the petitioner in this case, insisted that they could not subsist if forced to pay the minimum wages and overtime compensation required by the Act, thus increasing disemployment with all its evil consequences to the general well-being of their workers and the general public. Congress, before enacting the Act, and establishing its policy, heard their arguments and after weighing those advanced by the supporters of the bill that these starving wages originated labor disputes, unfair methods of competition, and interference with the orderly and fair marketing of goods, made the Declaration of Policy contained in Section 2 of the Act, establishing the motives and purposes of the statute. And if financial inabilities or difficulties of employers originated the starving wages which caused the evils which the Act intends to remedy to secure the maintenance of minimum standards necessary, how can an employer rely now on that same financial inability or difficulty to avoid its obligation to pay in full the minimum wages and overtime compensation earned by his employees after the effective date of the Act, if the declared policy of the Act is that Congress adopted this instrumentality to correct and eliminate the prevailing substandard conditions which burdened and obstructed commerce? The Declaration of Policy contained in the Act, the objectives of this legislation and the methods employed to attain them, may not be set at naught by agreement be-

tween the parties or by acquiescence of employees regardless of exceptional circumstances or not.

The Federal Bankruptcy Act Is Not Involved in This Case

The petitioner advances the theory that the question of the validity of a waiver or settlement agreement of an employee's claim under The Fair Labor Standards Act of 1938, involves the broader question whether such employee can lawfully accept a plan of reorganization or be bound by a reorganization decree, under the Bankruptcy Act; whether employees of an employer that may be adjudicated a bankrupt can make such a settlement; and whether their claim for wages, except those exempted by the Bankruptcy Act, are released by the discharge of the bankrupt.

The waiver agreement, the validity of which is at issue, was a private contract entered into November 4, 1941 (R. 141), between the petitioner and the representatives of some eleven hundred of its employees, and was not executed under or pursuant to any Order, Decree, or other judicial mandate of a Court of Bankruptcy and therefore it is clear that the operation of the Bankruptcy Act or its application, is not involved in this case and is not before this Honorable Court. Furthermore neither the decision of the District Court nor of the Circuit Court of Appeals are based on such Bankruptcy Act.

This Honorable Court is without power to give advisory opinions and will not decide abstract, hypothetical, or contingent questions, or formulate a rule of constitutional law, broader than is required by the precise facts to which it is to be applied, nor decide any constitutional or federal question except with reference to the particular facts before it. *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450; *Congress of Industrial Organizations* v. *McAdory*, 325 U. S. 472.

The Correction of the Evil Economical Consequences of the Operation of an Act Is Beyond the Province of This Honorable Court.

Petitioner contends that the decision of the Circuit Court of Appeals vitaliy affects the public interest and economic life of Puerto Rico, solely because it may cause the discontinuance of its principal railroad system, and increase disemployment. The Circuit Court of Appeals, answering this same argument rightly held that "whether enforcement of the statutory rights of appellants, respondents before this Court, will benefit or injure them, their employer, or the community is legally immaterial" (R. 173).

It is legally beyond the province of the judiciary to remedy the evil economical consequences of the uniform application of an act in a particular section or territory of the nation, as this will be a clear invasion of the legislative powers of the Congress.

Considerations of public interest or private inconvenience, will not overrule settled principles of law—*Henry* v. *A. B. Dick Co.*, 224 U. S. 1—nor the individual hardship which may result from the application of these principles may induce the Court to place its decision upon considerations which are quite apart from the law. *Shaw* v. *Kellogg*, 170 U. S. 312; *Buchanan* v. *Litchfield*, 102 U. S. 278; *Silliman* v. *United States*, 101 U. S. 465.

Conclusion

The decision of the Circuit Court of Appeals is correct, and the Petition for a Writ of Certiorari should be denied.

L. E. Dubon,
Attorney for the Respondents.